

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
V.)	2:23-cr-20121-JPM
)	
ASHLEY GRAYSON AND)	
JOSHUA GRAYSON,)	
)	
Defendants.)	

JURY INSTRUCTIONS

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your discussions—what we call your deliberations.

It will be your duty to decide whether the government has proved beyond a reasonable doubt the specific facts necessary to find the defendant you are considering guilty of the crime charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for

or against a defendant or the government. You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

Indictment

The indictment or formal charge against the defendants is not evidence of guilt. Indeed, each defendant is presumed by the law to be innocent. The law does not require a defendant to prove his or her innocence or produce any evidence at all. The government has the burden of proving each defendant guilty beyond a reasonable doubt as to the charge in the indictment, and if it fails to do so for either defendant, you must find that defendant not guilty as to that charge.

Separate Consideration - Multiple Defendants Charged with a Single Crime (2.01B)

The defendants have both been charged with one crime. But in our system of justice, guilt or innocence is personal and individual. It is your duty to separately consider the evidence against each defendant, and to return a separate verdict for each one of them. For each defendant, you must decide whether the government has presented evidence proving that particular defendant guilty beyond a reasonable doubt.

Your decision on one defendant, whether guilty or not guilty, should not influence your decision on the other defendant.

Burden of Proof

While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning a defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that a defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

Evidence

As stated earlier you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses, the exhibits admitted in the record and any facts as to which the parties have stipulated or as to which the Court has taken judicial notice. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Also, you should not assume from anything I may have said or

done that I have any opinion concerning any of the issues in this case. Except for my instructions to you, you should disregard anything I may have said in arriving at your own decision concerning the facts.

Witnesses: Credibility

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things the witness testified about? Did the witness appear to understand the

questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as the witness remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.

The fact that a witness has been convicted of a felony offense is another factor you may consider in deciding whether you believe the witness's testimony.

Defendant's Right Not to Testify 7.02 (A)

A defendant has the absolute right not to testify or present any evidence. The fact that Ashley Grayson and Joshua Grayson did not testify or present any evidence cannot be considered by you in any way. Do not even discuss it in your deliberations.

Remember that it is up to the government to prove each defendant guilty beyond a reasonable doubt. It is not up to a defendant to prove that he or she is innocent.

Testimony of an Accomplice - 7.08

You have heard the testimony of Olivia Johnson and Brandon Thomas. You have also heard that they may have been involved in the same crime that the defendants are charged with committing. You should consider these witnesses' testimony with more caution than the testimony of other witnesses.

Do not convict a defendant based on the unsupported testimony of such a witness, standing alone, unless you believe that witness's testimony beyond a reasonable doubt.

Law Enforcement Witnesses

You have heard the testimony of law enforcement officials. The fact that a person has been employed by the city, county, state, or federal government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of each law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

Statement and Argument of Counsel

You must not consider as evidence any statements of counsel made during the trial.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the Court. Such matter is to be treated as though you had never known it.

You must never speculate to be true any insinuation suggested by a question asked of a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

Indictment: Not Guilty Plea

I told you at the outset that this case was initiated through an indictment. An indictment is a formal method of accusing a defendant of a crime. It includes the government's theory of the case, and we will be going over in a few minutes the substance of the indictment. The indictment is not evidence of any kind against an accused.

Each defendant has pled not guilty to the charge contained in the indictment. This plea puts in issue each of the essential elements of the offense as described in these instructions and imposes upon the government the burden of establishing each of these elements by proof beyond a reasonable doubt.

Indictment Text

I will read the indictment to you once again so that you are well aware of the charge made in the indictment.

The indictment reads:

Statute

The applicable statute is 18 U.S.C. § 1958 which provides, in relevant part:

"Whoever . . . causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay anything of pecuniary value, or who conspires to do so" shall be guilty of a crime.

Use of Interstate Commerce Facilities in the Commission of Murder
for Hire, 18 U.S.C. § 1958

Count One of the indictment accuses the defendants of conspiring with each other and with others known and unknown to use and cause another to use a facility of interstate commerce, a cellular telephone, with the intent that the murder of D.H. be committed in violation of the law of the state of Mississippi, and as consideration for the receipt of, and promise and agreement to pay, money and other items of pecuniary value, in violation of Title 18, United States Code, Section 1958. This offense is commonly known as murder for hire.

For you to find the defendant you are considering guilty of this crime, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

First, that the defendant you are considering conspired to cause another person to use a facility of interstate commerce;

Second, that the defendant you are considering did so with the intent that a murder be committed, in violation of the laws of the state of Mississippi; and

Third, that the murder was to be committed as consideration for the promise or agreement to pay anything of pecuniary value.

Conspiracy Defined

A conspiracy is a kind of criminal partnership. For you to find either of the defendants guilty of the crime, the government must prove each and every one of the following elements beyond a reasonable doubt.

First, that two or more persons conspired or agreed to commit the crime of Murder for Hire;

Second, that the defendant you are considering knowingly and voluntarily joined the conspiracy; and

Third, that a member of the conspiracy did the overt act described in the indictment for the purpose of advancing or helping the conspiracy.

Pecuniary Value Defined

"Anything of pecuniary value" means that the government must prove that there was a mutual agreement, understanding, or promise that something of value would be exchanged for committing a murder.

Use of an Interstate Facility Defined

"Use of an interstate facility" is a means of a communication that crosses state lines in the course of commerce. As a matter of law, a cell phone is a facility of interstate commerce. The use of an interstate facility must have occurred to facilitate or further the commission of a murder.

Murder Defined

Under Mississippi law, murder is defined as unlawfully and with deliberate design, killing a human being.

In this instruction, "deliberate design" means a person decides to unlawfully kill another person, and there is no legally justifiable or excusable reason for doing so. The decision to kill a person can be formed very quickly and may occur only moments before the actual act of killing. However, deliberate design cannot be formed at the exact moment of the act of killing.

Agreement Defined

With regard to the first element of a conspiracy—a criminal agreement—the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit the crime of Murder for Hire.

This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit the crime of Murder for Hire. This is essential.

An agreement can be proved indirectly, by facts and

circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

Defendant's Connection to the Conspiracy

If you are convinced that there was a criminal agreement, then you must decide whether the government has proved that the defendant you are considering knowingly and voluntarily joined that agreement. You must consider each defendant separately in this regard. To convict a defendant, the government must prove that the defendant you are considering knew the conspiracy's main purpose, and that that defendant voluntarily joined it intending to help advance or achieve its goals.

This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that that defendant was a member of it from the very beginning. Nor does it require proof that a defendant played a major role in the conspiracy, or that the defendant you are considering's connection to it was substantial. A slight role or connection may be enough.

But proof that a defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if the defendant you are considering approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a

conspiracy does not necessarily make him or her a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough.

A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that that defendant knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant you are considering not guilty of this charge.

3.06

Now, some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted or tried together in one proceeding.

On or About

Next, I want to say a word about the dates mentioned in the indictment.

The indictment charges that the crime happened "on or about" August 26, 2022, and continued until on or about September 11, 2022. The government does not have to prove that the crime happened on those exact dates. But the government must prove that the crime happened reasonably close to those dates.

Venue 3.07

Now, some of the events that you have heard about happened in other places. There is no requirement that the entire conspiracy take place here in the Western District of Tennessee. But for you to return a guilty verdict on the conspiracy charge, the government must convince you that either the agreement, or one of the acts in furtherance of the conspiracy took place here in the Western District of Tennessee.

Unlike all the other elements that I have described, this is just a fact that the government only has to prove by a preponderance of the evidence. This means the government only has to convince you that it is more likely than not that part of the conspiracy took place here. Remember that all the other elements I have described must be proved beyond a reasonable doubt.

Inferring Required Mental State

Next, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But, a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did or did not do, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

Summary

In summary, if you find, as to the defendant that you are considering, that the government has proved beyond a reasonable doubt each of the elements of the crime charged, then you must return a verdict of guilty as to that defendant.

If you find that the government has failed to prove, beyond a reasonable doubt any of the elements of Count One as to the defendant you are considering, you must return a verdict of not guilty as to that defendant.

Consider Only Specific Offense Charged

I caution you, members of the jury, that you are here to determine from the evidence in this case whether each defendant is guilty or not guilty of the crime charged in the indictment. Each defendant is on trial only for the specific offense alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If a defendant is convicted the matter of punishment is for the court to determine.

Disregard Belief as to Guilt or Innocence of Other Persons

You are here to determine the guilt or innocence of each accused defendant from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether or not the evidence in the case convinces you beyond a reasonable doubt of the guilt of each accused defendant without regard to any belief you may have about guilt or innocence of any other person or persons.

Unanimous Verdict

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges - judges of the facts.

Deliberation Instructions

When you go to the jury room you should first select one of your members to act as your presiding juror. The presiding juror will preside over your deliberations and will speak for you here in court.

Two forms of verdict (one as to each defendant) have been prepared for your convenience. The verdict forms will be placed in a folder and handed to you by the Court Security Officer. At any time that you are not deliberating (i.e., when at lunch or during a break in deliberations), the folder and verdict forms should be delivered to the Court Security Officer who will deliver it to the courtroom Deputy Clerk for safekeeping.

[EXPLAIN VERDICT FORMS]

You will take the verdict forms to the jury room and when you have reached unanimous agreement you will have your presiding juror fill in the verdict forms, date and sign them, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the Court Security Officer who will bring it to my attention. I will then respond as promptly as possible after conferring with counsel, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at any time.

If you feel a need to see the exhibits which are not being sent to you for further examination, advise the Court Security Officer and I will take up your request at that time.

The jury alternates (jurors number 26 and 03, in seats 7 and 14), should remain present for all deliberations. You cannot and are not allowed to deliberate. You remain an alternate and remain present so that, if one of the twelve deliberating jurors is excused by the Court you may then be instructed by the Court to join the jury and join in deliberations.

You may now retire to begin your deliberations.

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